where non-compliance with the rule did not bring about any prejudice to any party. The petition cannot be set aside on this ground. The debtor fails in his objections.

The opposition of the debtor to the petition is dismissed with costs to be taxed. Similarly, the oppositions of the debtors of the said two other petitions *(supra)* are also dismissed with costs to be taxed.

RE: KOH THONG KUANG; *EX PARTE*: UNITED MALAYAN BANKING CORPORATION BERHAD

HIGH COURT MALAYA, KUALA LUMPUR
DATO' SITI NORMA BTE YAAKOB J.
[BANKRUPTCY NO. D2-29-7512-92]
27 APRIL 1994

BANKRUPTCY: Appeal - Application to set aside bankruptcy notice dismissed by SAR - Application based on affidavit of judgment debtor without notice of motion filed pursuant to r. 18 of the Bankruptcy Rules 1969 - Whether Court had power to entertain application - Service of bankruptcy notice by substituted service - Contention that bankruptcy notice not posted at judgment debtor's last known address - Contention that judgment debtor residing out of the country at material time of service - Whether service bad in law - Whether judgment debtor falls within categories of s.3(3) of the Bankruptcy Act 1967.

This was an appeal against the decision of the learned Senior Assistant Registrar (SAR) dismissing the judgment debtor's application to set aside the bankruptcy notice dated 22 December 1992 on the ground that service of it by way of substituted service was bad in law.

The bankruptcy notice was served by substituted service pursuant to order of Court dated 9 February 1993. Copies of the bankruptcy notice and the Court order were posted at the judgment debtor's last known address at 146, Jalan Maarof, Bangsar, 59000 Kuala Lumpur and notice of the bankruptcy notice was published in the Malay Mail on 29 March 1993. On 9 April 1993 the judgment debtor affirmed and filed his affidavit to set aside the bankruptcy notice. The judgment debtor contended that 146, Jalan Maarof, Bangsar, Kuala Lumpur was not his last known address which he claimed the judgment creditor was aware of from their attempts to serve a bankruptcy notice on him at 145, Jalan Maarof, Bangsar in previous bankruptcy proceedings. The judgment debtor further contended that when the bankruptcy notice and order of Court were posted at 146, Jalan Maarof, Bangsar he was residing at 15, Bolton Street, London W1, England which the petitioner was apparently also aware of from the judgment debtor's previous notice of intention to oppose the creditor's petition and his present affidavit in support of his application. Furthermore, the judgment debtor had another address in London which was declared in an affidavit related to a civil suit where he was a defendant.

The judgment debtor relied on s. 3(3) of the Bankruptcy Act 1967 to support his contentions.

Held:

[1] From the records it was clear that the previous bankruptcy proceedings were withdrawn because of defective service as the judgment debtor never resided at 145, Jalan Maarof but at 146, Jalan Maarof which was confirmed by the judgment debtor himself in his affidavit. It appeared that at the relevant time the judgment debtor had three adresses, two in London and one in Kuala Lumpur and that he returned often to Kuala Lumpur for business. It was also not disputed that he was a Malaysian and possessed a Malaysian passport. On the facts the judgment debtor could be categorised under sub-section (b) of s. 3(3) of the Bankruptcy Act 1967 as he admitted he had resided at 146, Jalan Maarof, Bangsar.

[2] From the manner in which the judgment debtor had been alternating between London and Kuala Lumpur and from the fact that bankruptcy proceedings had previously been commenced against him in this country, there could be no doubt that the judgment debtor was taking advantage of the situation to evade personal service of the bankruptcy notice. From his very conduct the Court considered that he had not abandoned Kuala Lumpur as his place of residence altogether. Since the judgment creditor was not expected to keep track of his movements, the Court did not consider that service of the bankruptcy notice was defective.

The purpose of substituted service was to inform the judgment debtor of the impending bankruptcy proceedings which purpose had been fulfilled as he had filed his affidavit promptly, 2 days after service of the bankruptcy notice became effective.

[Appeal dismissed with costs].

Case referred to:

Re Peh Kong Wan, ex parte United Malayan Banking Corp. Bhd. [1992] 2 MLJ 292 ***(dist)***

Legislation referred to:

Bankruptcy Act 1967, s. 3(3)
Bankruptcy Rules 1969, r. 18

For the judgment debtor - Ranjit Singh; M/s. Cheang & Ariff
For the judgment creditor - T. Thomas; M/s. Skrine & Co.

JUDGMENT

Siti Norma Bte Yaakob J:

In these bankruptcy proceedings, the judgment debtor seeks to set aside a bankruptcy notice dated 22 December 1992, on the ground that service of it by way of substituted service on him is bad in law. Before the Senior Assistant Registrar, the application was dismissed with costs and on appeal 2 issues were raised.

(1) Whether the Court has the power to entertain the application based only on the affidavit of the judgment debtor without a proper notice of motion filed under r. 18 of the Bankruptcy Rules 1969.
(2) Whether the judgment debtor falls within any of the categories of debtor under s. 3(3) of the Bankruptcy Act 1967.

Mr. T. Thomas, who raised the first issue, conceded that notwithstanding r. 18, the Court has a discretion to treat the affidavit of the judgment debtor as an application to have the bankruptcy notice set aside. I entirely agree with him on this and as the objection is only on procedure alone, I had exercised my discretion and proceeded to hear the merits of the application in the absence of a notice of motion.

The bankruptcy notice was served on the judgment debtor by way of substituted service pursuant to an order of Court dated 9 February 1993. Under the terms of the order, it had to be served on the judgment debtor by

(1) posting a copy of it together with a copy of the order of the Court on the judgment debtor's last known address at 146, Jalan Maarof, Bangsar, 59000 Kuala Lumpur, and
(2) advertising a notice of the bankruptcy notice in one issue of any daily newspaper,

and that such posting and advertisement shall be deemed to be good service, 7 days after the date of such last posting or advertisement.

Copies of the bankruptcy notice and the Court order were posted at the judgment debtor's last known address on 17 March 1993, and a notice of the bankruptcy notice was published in the Malay Mail on 29 March 1993.

On 9 April 1993, the judgment debtor affirmed and filed his affidavit to set aside the bankruptcy notice.

The judgment debtor contends that No. 146, Jalan Maarof, Bangsar, Kuala Lumpur, was not his last known address and that the judgment creditor was aware of this fact by virtue of previous bankruptcy proceedings taken by the judgment creditor against him in D5-29-7400-91. In those proceedings, the bankruptcy notice and the creditors petition were served on the judgment debtor at No. 145, Jalan Maarof, Bangsar, Kuala Lumpur. When service at that premises was challenged, the judgment creditor withdrew the bankruptcy proceedings and following such withdrawal, commenced the instant bankruptcy proceedings against him.

From the records it is clear that the previous bankruptcy proceedings were withdrawn because of defective service as the judgment debtor never resided at No. 145, Jalan Maarof, but at 146, Jalan Maarof. This was confirmed by the judgment debtor himself in his own affidavit in these proceedings.

He further reiterates that when copies of the bankruptcy notice and the order of Court were posted at No. 146, he was no longer residing there but was residing in England and the judgment creditor was aware of this fact as in his notice of intention to oppose the bankruptcy notice and creditor's petition in the earlier bankruptcy proceedings, he had given his address as No. 15, Bolton Street, Piccadilly, London W1, England, the same address that has been inserted in his affidavit supporting his application.

While it is true that he had declared his residence to be at 15, Bolton Street, London W1, England, in both affidavits, he has however affirmed both affidavits in Kuala Lumpur, thereby confirming his presence in Kuala Lumpur on 16 October 1992, and 9 April 1993. Mr. Ranjit Singh confirmed that the judgment debtor comes to Kuala Lumpur very often and was present in Kuala Lumpur to give instructions a day before the hearing of this appeal before me.

Besides 15, Bolton Street, London, the judgment debtor has also another address in London at 14, Condray Place, London, which he had declared in an affidavit affirmed on 16 July 1993, in London in proceedings in Civil Suit D2-23-1034-88. The judgment debtor was cited as one of the defendants in that civil suit.

Thus it would appear that at the relevant time, the judgment debtor had 3 addresses, two in London and one in Kuala Lumpur, and that he returns to Kuala Lumpur quite often for business. It is also not disputed that he is a Malaysian and possesses a Malaysian passport. Under these circumstances, the judgment debtor relies on s. 3(3) of the Bankruptcy Act 1967, which defines a debtor to be any person who:

(a) was personally present in Malaysia or
(b) was ordinarily resident or had a place of residence in Malaysia.
(c) was carrying on business in Malaysia either personally or by means of an agent or
(d) was a member of a firm or partnership which carried on business in Malaysia.

at the time the act of bankruptcy was committed.

On the facts, the judgment debtor can be categorised under subsection (b) above as he had admitted that he had resided at No. 146, Jalan Maarof, Bangsar, Kuala Lumpur.

From the very manner in which the judgment debtor has been alternating between London and Kuala Lumpur and that bankruptcy proceedings had previously been commenced against him in this country, there can be no doubt that the judgment debtor was taking advantage of a situation to evade personal service of the bankruptcy notice. From his very conduct, I consider that he has not abandoned Kuala Lumpur as his place of residence altogether. Since the judgment creditor is not expected to keep track of his movements, I do not consider that service of the bankruptcy notice in the manner it was done was in any way defective bearing in mind:

(1) that the judgment debtor returns to Kuala Lumpur very often.
(2) 146, Jalan Maarof, Bangsar, Kuala Lumpur, was where he had resided before.
(3) apart from the posting, there is also the advertisement of the bankruptcy notice in the Malay Mail.
(4) there is no intention to abandon his Malaysian residence unlike what was found in the case of *Re Peh Kong Wan, ex parte United Malayan Banking Corp. Bhd.* [1992] 2 MLJ 292.

Since the purpose of substituted service is to inform the judgment debtor of the impending

bankruptcy proceedings, I consider that in the circumstances of this case that purpose had been fulfilled as he had filed his affidavit promptly on 9 April 1993, 2 days after service of the bankruptcy notice became effective.

For the reasons I have given, I had dismissed the appeal with costs.

SIVARAJAH A/L K. SUBRAMANIAM & 4 ORS.

v.

ANDREW YEOH ENG HUAT & 2 ORS.

HIGH COURT MALAYA, KUALA LUMPUR
TUAN RICHARD TALALLA J.
[CIVIL SUIT NO. D2-22-1047-1993]
8 JUNE 1994

PRACTICE & PROCEDURE: Application to consolidate - Plaintiffs commencing 3 actions on same day against the same defendants for the same relief in respect of 3 separate companies on the same grounds and similar facts - Multiplicity - O. 15 rr. 1(1)(a) & 5(1) RHC - Jurisdiction of the Court - Whether an abuse of process of the Court.

The plaintiffs instituted 3 actions against the same defendants on the same day and time in the same division of the Court seeking declarations that they were the duly appointed directors of the company and that the appointment of the defendants to their offices was null and void and for an injunction restraining the defendants from holding themselves out or acting in their respective offices. In the 3 actions the relief sought was the same in respect of 3 separate companies on the same grounds and based on similar facts. The plaintiffs applied for an order for consolidation of the 3 actions.

Held:

[1] Under O. 15 r. 1(1)(a) as read with r. 5(1) of the Rules of the High Court 1980 a plaintiff may in one action claim relief against the same defendant in respect of more than one cause of action if the plaintiff claims in the same capacity in respect of all the causes of action but the Court has the discretion to order separate trials if it appears that the joinder may embarass or delay the trial or is otherwise inconvenient.

[2] The plaintiffs relied on the case of *Edward Goh Geok Seng v. Dunstan Dumpangol & Ors.* (No. 2) [1989] 2 MLJ 119, where the facts were similar to the present case but the Court held there was no abuse of process of the Court. The Court in the present case declined to follow that decision as there was nothing to indicate that the provisions of O. 15 rr. 1(1)(a) & 5(1) read with the rule against multiplicity of proceedings were brought to the attention of the learned Judge, which would have placed the onus on the plaintiffs to explain why 3 actions instead of 1